IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2977 OF 2001

Shri Imam Mirasaheb Nadaf,)
B.M.C.House No.PN No.6785/189/11,)
Nadaf Chawl, Yamunabai Pada,)
Bachhani Nagar Road, Malad (E),)
Mumbai - 400 097.).. Petitioner.

Versus

1. The State of Maharashtra,)
through the Secretary,)
Housing & Spl.Assistance Deptt.,)
Mantralaya, Mumbai - 400 032.)

2. The Collector,)
Mumbai Suburban District,)
having his office at New Admn.)
Building, Bandra (E),)
Mumbai - 400 051.)

3. The Addl.Collector (Encroachment))
Mumbai City and Mumbai Suburban)
District, having his office at)
Old Customs House, Fort,)
Mumbai - 400 021.)

4. The Dy.Collector (Encroachment))
& Competent Authority,)
Borivali Taluka, having his)
office at Siddharth nagar, 1st)
floor, S.V.Road, Goregaon (W),)
Mumbai - 400 062.)

5. Slum Rehabilitation Authority,)
an Authority constituted under)
Maharashtra Slum Areas)
(Improvement Clearance &)
Redevelopment), Act, 1971,)
having its office at Grihnirman)
Bhavan, Bandra (E),)
Mumbai - 400 051.).. Respondents

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Shri Abhay Patki for petitioner.

Shri Milind More, AGP for respondent Nos.1 to 4.

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CORAM: R.M.S.KHANDEPARKAR, J

DATED: 12th AUGUST, 2004

ORAL JUDGMENT :

1. Heard the learned advocates for the parties.

Perused the records.

2. The petitioner challenges the judgment and

order dated 11th October, 2001 passed in Appeal No.22 of 2001 by the Maharashtra Slum Areas (I.C.&R.) Tribunal, Mumbai. The challenge to the impugned order is on the two grounds. Firstly, that the petitioner had raised the specific plea as regards the non-compliance of the mandatory requirements under Section 4(1) before issuing the declaration under the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) Act, 1971 (hereinafter called as "the said Act") in relation to the area in question and the lower appellate authority failed to consider the same and thereby failed to exercise its jurisdiction in that regard, which is otherwise required to be exercised. Secondly, that the lower appellate authority also failed to decide the issue pertaining to the non-service of the notice relating to the said declaration which was required to be served in terms of the procedure prescribed for that purpose under the Maharashtra Slum Areas (Improvement, Clearance & Redevelopment) (Other Manner of Publication of Declaration) Rules, 1971, (hereinafter called as "the said Rules".)

3. Few facts relevant for the decision are that the notification under Section 4(1) of the said Act came to be issued in relation to the various areas including the area comprised of the property No.129/11, of the petitioner on 18th March, 1978. Sometimes in November, 1998, some unknown persons

commenced measurement of the petitioner's property, and on inquiry with them, the petitioner came to know about the said declaration. The petitioner, after obtaining a copy of the said notification, filed an appeal before the Tribunal on 28th June, 1999 along with the application for condonation of delay as the appeal was otherwise required to be filed within 30 days from the date of issuance of the said notification. After hearing both the parties, the Tribunal condoned the delay holding that the respondents had not established that the petitioner was aware about the declaration of the area in question as the slum area at any date earlier to the date disclosed by him as the date of the knowledge about the said declaration. The said order, was passed on 18th January, 2001. The respondents did not challenge the said order and it attained finality for all purposes. The Tribunal, however, after hearing both the parties on merits, dismissed the appeal holding that it is the contention of the respondents that the notice was issued to the petitioner though the records in respect of issuance of such notice are not traceable besides the notice was published at the Khotkuwa Road under panchanama, and secondly that the family members of the petitioner have entered into an agreement with the respondent-Slum Rehabilitation Authority in relation to an alternative accommodation and that therefore the petitioner has no locus standi to file an appeal.

4. The impugned order is sought to be assailed on the grounds stated above, while it is sought to be contended on behalf of the respondents that already more than 23 years have elapsed from the date of the notification and the petitioner was served with the substituted service of the notice of notification and the panchanama in that regard clearly establishes the same and that the family members of the petitioner having been benefited under the scheme and all these points having been considered by the lower appellate authority, there is no case for interference in the impugned order in exercise of the writ jurisdiction.

5. As rightly submitted by the learned advocate for the petitioner, bare reading of the impugned order discloses that the lower appellate authority completely ignoring the contentions raised by the petitioner before it, has proceeded to dispose of the matter on totally extraneous grounds, and that by itself would justify setting aside of the impugned order and remanding the matter to the lower appellate authority for its disposal in accordance with the provisions of law and for consideration of the points raised by the petitioner. It is to be noted that the petitioner had specifically contended about the non service of the notice in relation to the declaration and yet, merely by reproducing the contentions in that regard on behalf of the respondents, the lower

appellate authority has dismissed the appeal. Apparently, the lower appellate authority has not at all decided the relevant issues in one way or the other, nor there appears to be any application of mind to the matter in issue.

6. As regards the point relating to necessity for compliance of prerequisites under Section 4(1) of the said Act before issuing the notification, the lower appellate authority has totally ignored the said issue and has not at all addressed to the same and has proceeded to dispose of the appeal on the ground of absence of locus standi to the petitioner to file appeal and that too on the ground that the family members of the petitioner had entered into an agreement with the Slum Rehabilitation Authority in relation to the alternative accommodation. The finding is not only arbitrary but is also totally perverse and cannot be sustained under any circumstances. The issue, which was sought to be raised, was specifically in relation to the failure on the part of the authority to comply with the prerequisites under Section 4(1) in order to enable the authorities under the said Act to issue the notification regarding declaration of the area to be a slum area under the said Act. As rightly submitted by the learned advocate for the petitioner that, before the authority exercises its power to issue such declaration, the authority must satisfy itself about

the area lacks those amenities which are specified under the provisions of the said Act being prerequisites for the purpose of declaring an area as the slum area under the said Act and only thereafter, it can declare the area to be a slum area in exercise of powers under Section 4(1) of the said Act.

7. Plain reading of the notification itself would disclose that the authority has not at all satisfied about absence of such basic amenities in the area. The paragraph 2 of the notification, which is stated to be the basis for issuance of the said notification, reads thus :

> "And whereas, on the basis of the information about the slum areas available, the competent authority is satisfied that the areas specified in the Schedule hereto (hereinafter referred to as the said areas) are source of danger to the health, safety or convenience of the public of that area and of its neighbourhood by reason of it being overcrowded and lacking in basic amenities, has been rendered insanitary, squalid, and/or otherwise."

Mere reproduction of some of the expressions from the statutory provision, without referring to the factual situation in the area, cannot disclose satisfaction of

the authority regarding compliance of prerequisites under the said provision of law.

8. Since the notification on the face of it does not disclose necessary requirements under Section 4(1) of the said Act having been complied with, undoubtedly, the authorities could have produced materials on record to establish that such requirements had been complied with, and it was necessary for the lower appellate authority to analyse the same so as to arrive at the finding whether there was sufficient materials on record for the authorities to arrive at the satisfaction regarding absence of basic amenities as per the requirements of statutory provisions for the purpose of declaration of the area to be a slum area by the said notification. The lower appellate authority having dismissed the appeal without considering the relevant issues in the matter, has clearly acted illegally rendering its judgment to be bad in law.

9. As regards the finding about the absence of the locus standi, needless to say that merely because the family members or relatives of the petitioner might have entered into an agreement with the S.R.Authority, that would not be a justification to non-suit the petitioner in the appeal, nor it can be held to be a sufficient ground to hold that the petitioner lacks of locus standi to maintain the

appeal. The finding in that regard is to be set aside as bad in law and is accordingly quashed and set aside.

10. As regards the contention regarding the lapse of 23 years from the date of notification and that therefore, there is no justification for interference in the impugned order, it is to be noted that the appeal was filed on 28th June, 1999 along with the application for condonation of delay by the petitioner. Therein the lower appellate authority, while condoning the delay, held that the petitioner was not aware of the said notification till the date of the knowledge thereof as alleged by him, and the said decision has attained finality for all purposes. Being so, it is not open for the respondents to raise the point of delay in this petition even though a period of 23 years from the date of notification might have elapsed, and on that ground, the petitioner cannot be sought to be non-suited and, therefore, the contention of the respondents as regards delay is to be rejected.

11. For the reasons stated above, it is apparent that the lower appellate authority without deciding the relevant issues, which were specifically raised in the matter, had proceeded to dispose of the appeal and, therefore, the impugned order cannot be sustained and is liable to be quashed and set aside, and the

matter is to be remanded to the lower appellate authority to decide the above referred issues, which were specifically raised by the petitioner, after hearing both the parties and in accordance with the provisions of law. The petition, therefore, succeeds and the impugned judgment and order is hereby quashed and set aside and the matter is remanded, as stated above, and the rule is made absolute in above terms with no order as to costs.